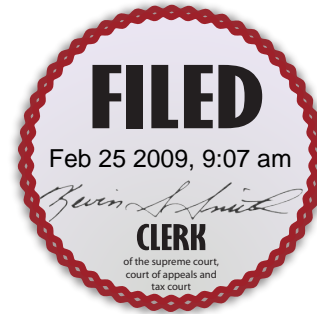


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MARIELENA LINDKE
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANTONIO J. RAY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 20A04-0811-CR-685

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0609-FA-46

February 25, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Antonio J. Ray appeals his convictions for Possession of Cocaine with the Intent to Deliver, a Class A felony,¹ Dealing in a Controlled Substance, a Class B felony,² and Maintaining a Common Nuisance, a Class D felony.³ We affirm.

Issue

Ray challenges the admission of a redacted version of the search warrant and letters addressed to him at the house searched.

Facts and Procedural History

Shortly after midnight on August 30, 2006, a search warrant was executed at 933 Middlebury Street in Elkhart, Indiana. During the search, the police found nine people in the home, including Ray and his girlfriend, Rochelle Baugh. Ray and Baugh were found in a bedroom. In that bedroom, police recovered over nine grams of crack cocaine, a crack pipe, lighter, a bag filled with clear plastic bags, a paper that had a handwritten list of names and quantities of money, male clothing and two letters addressed to Ray at 933 Middlebury Street. A safe in the bedroom contained over ninety ecstasy or Methylenedioxy-methamphetamine pills, 12.21 grams of crack cocaine, 55 grams of powder cocaine, a digital scale, a calculator, scissors, .38 caliber ammunition, \$2,300 cash and a letter addressed to Ray at a different address.

¹ Ind. Code § 35-48-4-1(b).

² Ind. Code § 35-48-4-2.

³ Ind. Code § 35-48-4-13.

On September 1, 2006, the State charged Ray with Possession of Cocaine with the Intent to Deliver, a Class A felony, Dealing in a Controlled Substance, as a Class B felony, and Maintaining a Common Nuisance, a Class D felony. After a jury trial, Ray was found guilty as charged. The trial court sentenced Ray to forty-five years for count I, fifteen years for count II, and two years for count III, all to be served concurrently.

Ray now appeals.

Discussion and Decision

I. Standard of Review

Ray alleges that the trial court erred in admitting a redacted version of the search warrant and letters addressed to Ray into evidence. Admission of evidence is within the sound discretion of the trial court. Amos v. State, 896 N.E.2d 1163, 1167 (Ind. Ct. App. 2008), trans. denied. We will only reverse a decision of the trial court to admit evidence if there is an abuse of such discretion. Id. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court. Id. at 1168.

II. Analysis

First, Ray alleges that it was an abuse of the trial court's discretion to admit a redacted version of the search warrant into evidence. At trial for purposes of establishing the legality of the search, the State offered into evidence a copy of the search warrant issued for the search of 933 Middlebury Street. Defense counsel objected on the basis of relevancy. The

trial court overruled the objection but required redaction of the portion of the warrant that detailed the items that were sought in the search.

“Search warrants and probable cause affidavits, although potentially admissible, should be presented only to the court and not to the jury.” Grund v. State, 671 N.E.2d 411, 417 (Ind. 1996). If the adequacy of the warrant is challenged, the State is obligated to introduce the search warrant and probable cause affidavit into evidence, but these documents should only be presented to the trial court as the issue of the warrant’s validity is not an issue for the jury. Winbush v. State, 776 N.E.2d 1219, 1223 (Ind. Ct. App. 2002), trans. denied. Documents, such as search warrants and probable cause affidavits, often contain highly prejudicial statements. Brown v. State, 746 N.E.2d 63, 67 (Ind. 2001).

Here, there was no challenge made to the validity of the search warrant. Therefore, it was unnecessary to introduce the warrant into evidence. Furthermore, the warrant should not have been among the evidence published to the jury as it was not relevant to the issues before it. However, the warrant’s admission does not mandate a reversal unless there is a showing that prejudice resulted therefrom. Winbush, 776 N.E.2d at 1223.

An error in the admission of evidence is harmless and does not warrant reversal on appeal, unless the error or defect affects the substantial rights of the defendant. Ind. Trial Rule 61. Ray does not make an argument that prejudice resulted from the admission of the search warrant. Nevertheless, the search warrant had the items sought redacted and did not contain Ray’s name. Furthermore, there was overwhelming evidence to support his

convictions. Therefore, the trial court's error was harmless.

Second, Ray argues that the admission of a pre-cash card receipt and letters that were addressed to him at 933 Middlebury Street was an abuse of the trial court's discretion because these items contain hearsay. Hearsay is a statement, oral or written, made out of court that is offered in evidence to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). Here, this evidence was not offered for the truth of the assertions contained in the letters or receipt. Rather, the challenged letters and receipt were offered as circumstantial evidence that Ray had a possessory interest in the bedroom where the illegal drugs were found. See Allen v. State, 798 N.E.2d 490, 501 (Ind. Ct. App. 2003). The existence of the letters and receipt among Ray's possessions tended to prove that he maintained dominion and control over the items in the bedroom, including the contraband. This supported the possession and dealing convictions as it shows that Ray had constructive possession of the contraband. See Mitchell v. State, 745 N.E.2d 775, 789 (Ind. 2001). Therefore, the letters and receipt were not hearsay. See Hernandez v. Florida, 863 So.2d 484, 486 (Fla. Dist. Ct. App. 2004) (holding that admission of envelope was not hearsay because it was offered as circumstantial evidence that defendant stored his property in the room and had control of the room); Shurbaji v. Virginia, 444 S.E.2d 549, 551 (Va. Ct. App. 1994) (concluding that utility bills addressed to defendant that were found in master bedroom along with cocaine were not hearsay); Illinois v. Hester, 409 N.E.2d 106, 109 (Ill. App. Ct. 1980) (concluding that letters addressed to defendants were properly admitted to "the question of the defendants' presence

at and control over the apartment to which the letters were addressed”); Missouri v. McCurry, 582 S.W.2d 733, 734 (Mo. Ct. App. 1979) (holding that telephone bill was properly admitted because it was a personal effect of defendant, demonstrating his connection to a bedroom where contraband was found).

Affirmed.

MATHIAS, J., and BARNES, J., concur.